

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 583

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO FORCIBLE ENTRY AND UNLAWFUL DETAINER; AMENDING SECTION 6-303, IDAHO CODE, TO REVISE PROVISIONS REGARDING WHEN A TENANT IS GUILTY OF AN UNLAWFUL DETAINER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 6-304, IDAHO CODE, TO REVISE PROVISIONS REGARDING HOW NOTICES MAY BE SERVED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 6-310, IDAHO CODE, TO REVISE PROVISIONS REGARDING WHAT SHALL BE STATED IN THE COMPLAINT IN A CERTAIN ACTION FOR POSSESSION; AMENDING SECTION 6-311, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CONTINUANCE IN A CERTAIN ACTION FOR POSSESSION; AMENDING SECTION 6-311A, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE RENDERING OF JUDGMENT BY A COURT; AMENDING SECTION 6-311C, IDAHO CODE, TO PROVIDE FOR AN ORDER OF RESTITUTION AND TO REVISE THE FORM; REPEALING SECTION 6-311E, IDAHO CODE, RELATING TO ACTION FOR DAMAGES, COMPLAINT AND SUMMONS; AMENDING SECTION 6-320, IDAHO CODE, TO PROVIDE A CODE REFERENCE, TO REVISE PROVISIONS REGARDING WRITTEN NOTICE TO A LANDLORD AND TO PROVIDE THAT A TENANT SHALL NOT BE ENTITLED TO ANY REMEDIES IN CERTAIN INSTANCES; AMENDING SECTION 6-321, IDAHO CODE, TO REMOVE REFERENCE TO A SIGNED STATEMENT, TO PROVIDE PROCEDURES FOR WHEN A LANDLORD FAILS TO RETURN A SECURITY DEPOSIT, TO PROVIDE REMEDIES FOR A TENANT, TO PROVIDE THAT A LANDLORD MAY STILL RECOVER OTHER DAMAGES AND TO PROVIDE THAT CERTAIN SECURITY DEPOSITS SHALL BE MAINTAINED IN A CERTAIN TRUST ACCOUNT; AMENDING SECTION 6-323, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 6-324, IDAHO CODE, TO REMOVE A PROVISION REGARDING TREBLE DAMAGES AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 3, TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 6-325, IDAHO CODE, TO PROVIDE FOR ABANDONMENT OF THE PREMISES IN CERTAIN INSTANCES; AND AMENDING CHAPTER 3, TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 6-326, IDAHO CODE, TO PROVIDE FOR ABANDONED PERSONAL PROPERTY, TO PROVIDE NOTICE, AND TO PROVIDE THAT A TENANT AND LANDLORD SHALL HAVE CERTAIN RIGHTS AND RESPONSIBILITIES REGARDING ABANDONED PERSONAL PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-303, Idaho Code, be, and the same is hereby amended to read as follows:

6-303. UNLAWFUL DETAINER DEFINED. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(1-) When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the civil code.

1 (2-) Where he continues in possession, in person or by subtenant, with-
 2 out permission of his landlord, or the successor in estate of his landlord,
 3 if any there be, after default in the payment of rent, or any other amounts
 4 due pursuant to the lease or agreement under which the property is held,
 5 and three (3) days' notice, in writing, requiring its payment, stating the
 6 amount which is due, or possession of the property, shall have been served
 7 upon him, and if there be a subtenant in actual occupation of the premises,
 8 also upon such subtenant. Such notice may be served at any time within one
 9 (1) year after the rent becomes due. In all cases of tenancy upon agricul-
 10 tural lands, where the tenant has held over and retained possession for more
 11 than sixty (60) days after the expiration of his term without any demand of
 12 possession or notice to quit by the landlord, or the successor in estate of
 13 his landlord, if any there be, he shall be deemed to be holding by permission
 14 of the landlord, or the successor in estate of his landlord, if any there be,
 15 and shall be entitled to hold under the terms of the lease for another full
 16 year, and shall not be guilty of an unlawful detainer during said year, and
 17 such holding over for the period aforesaid shall be taken and construed as a
 18 consent on the part of a tenant to hold for another year.

19 (3-) Where he continues in possession in person, or by subtenants,
 20 after a neglect or failure to perform other conditions or covenants of the
 21 lease or agreement under which the property is held, including any covenant
 22 not to assign or sublet, than the one for payment of rent, and three (3)
 23 days' notice, in writing, requiring the performance of such conditions or
 24 covenants, or the possession of the property, shall have been served upon
 25 him, and if there be a subtenant in actual occupation of the premises, also
 26 upon such subtenant. Within three (3) days after the service of the notice,
 27 the tenant, or any subtenant in actual occupation of the premises, or any
 28 mortgagee of the term, or other person interested in its continuance, may
 29 perform the conditions or covenants of the lease, or pay the stipulated rent,
 30 as the case may be, and thereby save the lease from forfeiture: provided, if
 31 the covenants and conditions of the lease, violated by the lessee, ~~can not~~
 32 cannot afterward be performed, then no notice, as last prescribed herein,
 33 need be given to said lessee or his subtenant demanding the performance of
 34 the violated covenant or conditions of the lease. A tenant may take pro-
 35 ceedings similar to those prescribed in this chapter, to obtain possession
 36 of premises let to an undertenant, in case of his unlawful detention of the
 37 premises underlet to him.

38 (4-) A tenant or subtenant, assigning or subletting, or committing
 39 waste upon, the demised premises contrary to the covenants of his lease,
 40 thereby terminates the lease, and the landlord, or his successor in estate,
 41 shall, upon service of three (3) days' notice to quit upon the person or per-
 42 sons in possession, be entitled to restitution of possession of such demised
 43 premises under the provisions of this chapter.

44 (5-) If any person is, or has been, engaged in any unlawful business on
 45 or in the premises, commits a criminal act on the premises or is engaged in
 46 the unlawful delivery, production or use of a controlled substance on the
 47 premises of the leased property during the term for which the premises are
 48 let to the tenant after service of three (3) days' notice to quit upon the
 49 person or persons in possession. The landlord or his successor in estate
 50 shall be entitled to restitution of possession of such demised premises un-

1 der the provisions of this chapter. For purposes of this chapter, the terms
 2 "delivery," "production," and "controlled substance" shall be defined as
 3 set forth in section 37-2701, Idaho Code.

4 SECTION 2. That Section 6-304, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 6-304. SERVICE OF NOTICE. The notices required by the preceding sec-
 7 tion ~~6-303, Idaho Code,~~ may be served either:

8 (1-) By delivering a copy to the tenant personally; or,
 9 (2-) If he be absent from his place of residence and from his usual place
 10 of business, by leaving a copy with some person of suitable age and discre-
 11 tion at either place, and sending a copy through the mail addressed to the
 12 tenant at his; or

13 (3) If he be absent from his place of residence; or, if such from the
 14 place of residence and business can not be ascertained, or subject of the
 15 tenancy and a person of suitable age or discretion can not cannot be found
 16 there, then by affixing a copy in a conspicuous place on the property, and
 17 also delivering a copy to a person there residing, if such person can be
 18 found; and also sending a copy through the mail addressed to the tenant at the
 19 place where the property is situated.

20 Service upon a subtenant may be made in the same manner.

21 SECTION 3. That Section 6-310, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 6-310. ACTION FOR POSSESSION -- COMPLAINT -- SUMMONS. (1) In an
 24 unlawful detainer action ~~exclusively~~ for possession of a tract of land of
 25 five (5) acres or less ~~for the nonpayment of rent, or on the grounds that a~~
 26 ~~landlord has reasonable grounds to believe that any person is, or has been,~~
 27 ~~engaged in the unlawful delivery, production or use of a controlled sub-~~
 28 ~~stance on the leased premises during the term for which the premises are let~~
 29 ~~to the tenant, or in the event the tenant is a tenant at sufferance pursuant~~
 30 ~~to subsection (11) of section 45-1506, Idaho Code, it is sufficient to state~~
 31 ~~in the complaint:~~

32 (a) A description of the premises with convenient certainty;

33 (b) That the defendant is in possession of the premises;

34 (c) That the defendant entered upon the premises, holds the premises,
 35 and is ~~in default of the payment of rent or that the landlord has rea-~~
 36 ~~sonable grounds to believe that any person is, or has been, engaged in~~
 37 ~~the unlawful delivery, production or use of a controlled substance on~~
 38 ~~the leased premises during the term for which the premises are let to the~~
 39 ~~tenant guilty of an unlawful detainer as defined in section 6-303, Idaho~~
 40 ~~Code;~~

41 (d) That all notices required by law have been served upon the defen-
 42 dant in the required manner or no notice is required because the defen-
 43 dant is a tenant at sufferance pursuant to ~~subsection (11) of section~~
 44 ~~45-1506(11),~~ Idaho Code; and

45 (e) That the plaintiff is entitled to the possession of the premises.

46 (2) Upon filing the complaint, a summons must be issued, served and re-
 47 turned as in other actions, provided, however, that at the time of issuance

1 of the summons, the court shall schedule a trial within twelve (12) days from
 2 the filing of the complaint, and the service of the summons, complaint and
 3 notice of trial setting on the defendant shall be not less than five (5) days
 4 before the day of trial appointed by the court.

5 (3) In an action for possession against a defendant alleged to be occu-
 6 pying property as a result of forcible detainer, a property owner shall state
 7 in a verified complaint:

8 (a) A description of the premises with convenient certainty;

9 (b) That the defendant is in possession of the premises;

10 (c) That the defendant entered upon the premises and holds the premises
 11 by means of forcible detainer;

12 (d) That neither the property owner nor any agent thereof has ever en-
 13 tered into a lease or any other similar agreement with the defendant;

14 (e) That all notices required by law have been served upon the defendant
 15 in the required manner; and

16 (f) That the plaintiff is entitled to the possession of the premises.

17 (4) Upon filing the complaint, a summons must be issued, served and
 18 returned as in other actions, provided, however, that at the time of issuance
 19 of the summons, the court shall schedule a trial within seventy-two (72)
 20 hours from the filing of the complaint, excluding weekends and official hol-
 21 idays. The service of the summons, complaint and notice of trial setting on
 22 the defendant shall be not less than twenty-four (24) hours before the time
 23 of trial appointed by the court.

24 (5) If any property owner files an action for possession against a de-
 25 fendant alleged to be occupying the property as a result of forcible detainer
 26 when a landlord-tenant relationship existed with the defendant and/or in bad
 27 faith, said property owner shall be liable to the defendant for treble dam-
 28 ages as enumerated in this chapter.

29 SECTION 4. That Section 6-311, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 6-311. CONTINUANCE. In an unlawful detainer action ~~exclusively as~~
 32 ~~provided in section 6-310, Idaho Code, for possession of a tract of land of~~
 33 ~~five (5) acres or less for the nonpayment of rent or if a landlord has al-~~
 34 ~~leged that the landlord has reasonable grounds to believe that any person,~~
 35 ~~is or has been, engaged in the unlawful delivery, production, or use of a~~
 36 ~~controlled substance during the term for which the premises are let to the~~
 37 ~~tenant, or if the person is in possession of the property and is a tenant at~~
 38 ~~sufferance pursuant to subsection (11) of section 45-1506, Idaho Code, no~~
 39 ~~continuance shall be granted for a longer period than two (2) days unless the~~
 40 ~~defendant applying therefor gives an undertaking to the adverse party with~~
 41 ~~good and sufficient security, to be approved by the court, conditioned for~~
 42 ~~the payment of the rent that may accrue if judgment is rendered against the~~
 43 ~~defendant.~~

44 SECTION 5. That Section 6-311A, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 6-311A. JUDGMENT ON TRIAL BY COURT. (1) In an unlawful detainer action
 47 ~~exclusively~~ for possession of a tract of land of five (5) acres or less ~~for~~

the nonpayment of rent or on the grounds that the landlord has reasonable grounds to believe that a person is, or has been, engaged in the unlawful delivery, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, or for forcible detainer, or if the tenant is a tenant at sufferance pursuant to subsection (11) of section 45-1506, Idaho Code, the action shall be tried by the court without a jury. In an action for unlawful detainer in which the claim alleges an act that would be considered criminal under the laws of this state, the court need only determine that it is more likely than not that the alleged act occurred to award judgment for the plaintiff as provided in this section. If, after hearing the evidence the court concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render an order of restitution and a general judgment against the defendant and in favor of the plaintiff, for:

(a) ~~Restitution of the premises and the costs and disbursements of the action, which order shall direct the tenant to vacate the premises, remove the tenant's personal property and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable within three (3) calendar days following service of the order; and~~

(b) Damages resulting to the plaintiff from any of the following:

(i) Waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;

(ii) The amounts due pursuant to the lease or agreement, if alleged in the complaint;

(iii) Treble damages as provided in section 6-317, Idaho Code;

(iv) The costs and disbursements of the action; and

(v) Reasonable attorney fees to the prevailing party as provided in section 6-324, Idaho Code.

(2) If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of ~~an~~ a separate action for damages not yet awarded in proceedings, as provided in this section, or to prevent the plaintiff from amending the complaint for damages or applying by motion to the court to augment the judgment for damages to the premises if discovered after possession of the premises is restored to the plaintiff.

SECTION 6. That Section 6-311C, Idaho Code, be, and the same is hereby amended to read as follows:

6-311C. ~~FORM ORDER OF EXECUTION~~ RESTITUTION. An order of restitution may be served at the trial as provided by section 6-310, Idaho Code, if the defendant appears. If the defendant fails to appear, an order of restitution may be served by the plaintiff or an agent of the plaintiff by posting such in a conspicuous place on the premises subject to the order of restitution. The ~~execution, should judgment~~ order of restitution, should it be rendered, may be in the following form:

1 STATE OF IDAHO)
 2) ss.
 3 County of)

4 TO THE DEFENDANT OR SHERIFF OR ANY CONSTABLE OF THE COUNTY:

5 WHEREAS, a certain action for the possession of the following described
 6 premises, to-wit:

.....

 7 lately tried before the above entitled court, wherein was plaintiff
 8 and was defendant, judgment an order of restitution was rendered on the
 9 day of, A.D.,, that the plaintiff have restitution of
 10 the premises, ~~and also that he recover the costs and disbursements in the sum~~
 11 ~~of \$~~. The defendant is hereby directed to vacate the premises, remove
 12 the defendant's personal property, and restore possession of the premises to
 13 the plaintiff, or be forcibly removed by a sheriff after three (3) calendar
 14 days of service of this order.

15 In the name of the State of Idaho, ~~you are the sheriff is~~, therefore,
 16 hereby commanded to cause the defendant and his goods and chattels to be
 17 forthwith removed from the premises and the plaintiff is to have restitution
 18 of the same. In the event the goods and chattels are not promptly removed
 19 thereafter by the defendant ~~you are~~, the sheriff is authorized and empowered
 20 to cause the same to be removed to a safe place for storage. ~~You are also~~
 21 ~~commanded to levy on~~ Plaintiff may elect to be delegated the responsibility
 22 for storage of the goods and chattels of that shall be deemed abandoned by the
 23 defendant, and pay the costs and disbursements, aforesaid, and all accruing
 24 costs, and as provided in Section 6-326, Idaho Code. The sheriff is to make
 25 legal service and due return of this writ.

26 WITNESS My hand and official seal (if issued out of a court of record)
 27 this day of, A.D.,

.....
 Clerk of the District Court

30 SECTION 7. That Section 6-311E, Idaho Code, be, and the same is hereby
 31 repealed.

32 SECTION 8. That Section 6-320, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 6-320. ACTION FOR DAMAGES AND SPECIFIC PERFORMANCE BY TENANT. (a) A
 35 tenant may file an action against a landlord for damages and specific perfor-
 36 mance for:

- 37 (1) Failure to provide reasonable waterproofing and weather protection
- 38 of the premises;
- 39 (2) Failure to maintain in good working order electrical, plumbing,
- 40 heating, ventilating, cooling, or sanitary facilities supplied by the
- 41 landlord;
- 42 (3) Maintaining the premises in a manner hazardous to the health or
- 43 safety of the tenant;
- 44 (4) Failure to return a security deposit as and when required by law as
- 45 described in section 6-321, Idaho Code;

1 (5) Breach of any term or provision of the lease or rental agreement ma-
 2 terially affecting the health and safety of the tenant, whether explic-
 3 itly or implicitly a part thereof; and

4 (6) Failure to install approved smoke detectors in each dwelling unit,
 5 to include mobile homes, under the landlord's control. Upon commence-
 6 ment of a rental agreement, the landlord shall verify that smoke detec-
 7 tors have been installed and are in good working order in the dwelling
 8 unit. The tenant shall maintain the smoke detectors in good working or-
 9 der during the tenant's rental period. For purposes of this section, an
 10 approved smoke detector is a battery-operated device that is capable of
 11 detecting visible or invisible particles of combustion and that bears
 12 a label or other identification issued by an approved testing agency
 13 having a service for inspection of materials and workmanship at the
 14 factory during fabrication and assembly. If the landlord or the land-
 15 lord's assignee fails to install working smoke detectors, the tenant
 16 may send written notice by certified mail, return receipt requested, to
 17 the landlord or the landlord's assignee that if working smoke detectors
 18 are not installed within seventy-two (72) hours of receipt of the let-
 19 ter, the tenant may install smoke detectors and deduct the cost from the
 20 tenant's next month's rent. Smoke detectors purchased by the tenant and
 21 deducted from rent become the property of the landlord and shall not be
 22 removed from the premises.

23 Upon filing the complaint, a summons must be issued, served and returned
 24 as in other actions, provided, however, that in an action exclusively for
 25 specific performance, at the time of issuance of the summons, the court shall
 26 schedule a trial within twelve (12) days from the filing of the complaint,
 27 and the service of the summons, complaint and trial setting on the defendant
 28 shall be not less than five (5) days before the day of trial appointed by the
 29 court. If the plaintiff brings an action for damages under this section, or
 30 combines his action for damages with an action for specific performance, the
 31 early trial provision of this section shall not be applicable, and a summons
 32 must be issued returnable as in other cases upon filing the complaint.

33 (b) In an action under this section, plaintiff, in his complaint, must
 34 set forth the facts on which he seeks to recover, describe the premises, and
 35 set forth any circumstances which may have accompanied the failure or breach
 36 by the landlord.

37 (c) If, upon the trial, the verdict of the jury, or, if the case be tried
 38 without a jury, the finding of the court, be in favor of the plaintiff against
 39 the defendant, judgment shall be entered for the amount of the damages as-
 40 sessed. Judgment may also be entered requiring specific performance for
 41 any breach of agreement showing by the evidence, and for costs and disburse-
 42 ments.

43 (d) Before a tenant shall have standing to file an action under this
 44 section, and except as provided in section 6-321, Idaho Code, he must give
 45 serve upon his landlord ~~three (3) days~~ written notice, ~~listing each failure~~
 46 ~~or breach upon which his action will be premised and written demand requiring~~
 47 ~~performance or cure. If, within three (3) days after service of the notice,~~
 48 ~~any listed failure or breach has not been performed or cured by the landlord,~~
 49 ~~the tenant may proceed to commence an action for damages and specific perfor-~~
 50 mance. The notice shall:

1 (1) Describe the deficient condition;

2 (2) State that the landlord has three (3) calendar days to commence re-
 3 medial action to correct the condition;

4 (3) Provide the landlord permission to enter the rental unit to make
 5 corrective action; and

6 (4) State that the tenant will file a complaint for specific perfor-
 7 mance or lease termination in the event the landlord does not commence
 8 remedial action within three (3) calendar days of service of the notice.

9 (e) A tenant is not entitled to any remedies under this section if the
 10 tenant is not in compliance with all requirements of the lease agreement in-
 11 cluding, but not limited to, all payments required by the lease and any other
 12 material terms of the lease agreement. A tenant is further not entitled to
 13 any remedies under this section if the tenant intentionally or negligently
 14 caused the deficient condition or if the tenant unreasonably denies access
 15 to, refuses entry to, or withholds consent to enter the rental unit to the
 16 landlord, agent or manager for purposes of inspecting the deficient condi-
 17 tion or making repairs to the rental unit.

18 (f) The provisions of this section shall not apply to tracts of land of
 19 five (5) acres or more used for agricultural purposes.

20 SECTION 9. That Section 6-321, Idaho Code, be, and the same is hereby
 21 amended to read as follows:

22 6-321. SECURITY DEPOSITS. (1) Amounts deposited by a tenant with a
 23 landlord for any purpose other than the payment of rent shall be deemed secu-
 24 rity deposits. Upon termination of a lease or rental agreement and surrender
 25 of the premises by the tenant, all amounts held by the landlord as a security
 26 deposit shall be refunded to the tenant, except amounts necessary to cover
 27 the contingencies specified in the deposit arrangement. The landlord shall
 28 not retain any part of a security deposit to cover normal wear and tear.
 29 "Normal wear and tear" means that deterioration which occurs based upon the
 30 use for which the rental unit is intended and without negligence, careless-
 31 ness, accident, or misuse or abuse of the premises or contents by the tenant
 32 or members of his household, or their invitees or guests.

33 Refunds shall be made within twenty-one (21) days if no time is fixed by
 34 agreement, and in any event, within thirty (30) days after surrender of the
 35 premises by the tenant. Any refunds in an amount less than the full amount
 36 deposited by the tenant shall be accompanied by a ~~signed~~ statement itemizing
 37 the amounts lawfully retained by the landlord, the purpose for the amounts
 38 retained, and a detailed list of expenditures made from the deposit.

39 If security deposits have been made as to a particular rental or lease
 40 property, and the property changes ownership during a tenancy, the new owner
 41 shall be liable for refund of the deposits.

42 (2) If a landlord or the landlord's agent fails to comply with the re-
 43 quirements described in subsection (1) of this section, the tenant may serve
 44 the landlord or the landlord's agent, in accordance with section 6-323,
 45 Idaho Code, a notice that:

46 (a) States the names of the parties to the rental agreement;

47 (b) Describes in detail how the landlord has failed to comply with the
 48 requirements in subsection (1) of this section; and

(c) Includes the address where the landlord or landlord's agent may send the items described in subsection (1) of this section.

(3) Within five (5) business days after the day on which the notice described in subsection (2) of this section is served, the landlord or the landlord's agent shall comply with the requirements described in subsection (1) of this section.

(4) If, after five (5) business days following service of the notice described in subsection (2) of this section is served, the landlord or the landlord's agent fails to comply with the requirements described in subsection (1) of this section, the renter may file an action in the appropriate court to enforce compliance with the provisions of this section pursuant to section 6-320, Idaho Code, and may recover from the landlord:

(a) The full security deposit; and

(b) A civil penalty of one hundred dollars (\$100).

(5) Nothing in this section shall preclude a landlord or a tenant from recovering other damages to which the landlord or tenant is entitled.

(6) A security deposit for a residential rental premises that is managed by a third-party manager for a landlord shall be maintained in a trust account at a federally insured financial institution. Such trust account shall be maintained separate from the third-party agent's operating account. The requirements of this subsection shall not apply to a property owner, managers who have common members or principals of the property owner entity, a real estate licensee or a nonprofit business organization as established under chapter 30, title 30, Idaho Code.

SECTION 10. That Section 6-323, Idaho Code, be, and the same is hereby amended to read as follows:

6-323. SERVICE OF NOTICE TO LANDLORD. The notice required by sections 6-320(d) and 6-321, Idaho Code, shall be served either:

(1) By delivering a copy to the landlord or his agent personally; or

(2) If the landlord or his agent is absent from his usual place of business, by leaving a copy with an employee at the usual place of business of the landlord or his agent; or

(3) By sending a copy of the notice to the landlord or his agent by United States Postal Service certified mail, return receipt requested.

SECTION 11. That Section 6-324, Idaho Code, be, and the same is hereby amended to read as follows:

6-324. ATTORNEY FEES. In any action brought under the provisions of this chapter, ~~except in those cases where treble damages are awarded,~~ the prevailing party shall be entitled to an award of attorney fees. For attorney fees to be awarded in cases requiring the three (3) days' notice as set forth in section 6-303 (2-), Idaho Code, it shall be necessary that the three (3) days' notice advise the tenant that attorney fees shall be awarded to the prevailing party.

SECTION 12. That Chapter 3, Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 6-325, Idaho Code, and to read as follows:

1 6-325. ABANDONMENT. Unless otherwise provided for in contract, abandon-
2 ment shall be presumed in either of the following situations:

3 (1) The tenant has not notified the landlord that he will be absent from
4 the premises, the tenant fails to pay rent within fifteen (15) days after the
5 due date, and there is no reasonable evidence other than the presence of the
6 tenant's personal property that the tenant is occupying the premises; or

7 (2) The tenant has not notified the landlord that he will be absent from
8 the premises, the tenant fails to pay rent when due, the tenant's personal
9 property has been removed from the dwelling unit, and there is no reasonable
10 evidence that the tenant is occupying the premises.

11 SECTION 13. That Chapter 3, Title 6, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 6-326, Idaho Code, and to read as follows:

14 6-326. ABANDONED PERSONAL PROPERTY. (1) Unless otherwise provided for
15 in contract, in the event of abandonment, or after possession of a rental
16 premises is restored to a landlord pursuant to an order of restitution, and
17 the tenant left personal property on the premises, the landlord is entitled
18 to remove the property from the premises, store it for the tenant and recover
19 actual or reasonable moving and storage costs from the tenant.

20 (2) The landlord shall post a copy of a notice in a conspicuous place
21 that the property is considered abandoned.

22 (3) The tenant may retrieve the property within fifteen (15) calendar
23 days from the date of the notice if the tenant tenders payment of all costs of
24 inventory, moving and storage to the landlord.

25 (4) If the property has been in storage for at least fifteen (15) calen-
26 dar days and the tenant has failed to recover the property after notice was
27 posted and pay reasonable costs associated with the inventory, storage and
28 removal, the landlord may:

29 (a) Sell the property and apply the proceeds toward any amount the ten-
30 ant owes; or

31 (b) Donate the property to charity if the donation is a commercially
32 reasonable alternative.

33 (5) A tenant may claim abandoned personal property within fifteen (15)
34 calendar days after the notice described in subsection (2) of this section
35 upon payment of costs, inventory, moving and storage. A landlord shall
36 not be liable for the loss of abandoned personal property if the abandoned
37 property is stored for fifteen (15) days in accordance with this section and
38 the tenant does not claim the property and pay inventory, moving and storage
39 costs during that fifteen (15) days.

40 (6) A tenant has no recourse for damage or loss if the tenant fails to
41 recover any abandoned personal property as required in this section.

42 (7) Nothing contained in this section shall be in derogation of or al-
43 ter a landlord's rights to a lessor's lien or any other contractual liens or
44 rights.

45 (8) A landlord is not required to store the following abandoned per-
46 sonal property:

47 (a) Chemicals, pests, potentially dangerous or other hazardous materi-
48 als;

49 (b) Animals of any kind;

1 (c) Gas, fireworks, combustibles, or any item considered to be haz-
2 ardous or explosive; or

3 (d) Garbage, perishable items, plants or items that when placed in
4 storage might create a hazardous condition or a pest-control issue.

5 (9) Items listed in subsection (8) of this section may be properly dis-
6 posed of by the landlord immediately upon determination of abandonment. A
7 tenant may not recover for disposal of abandoned items listed in subsection
8 (8) of this section.